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MESSAGE:

Annette:

Attached is the portion of the transcript from the 8/97 hearing at the beginning of the private parties' cost recovery case in which Judge Weber referred (twice) to his view that responsibility for "one empty paint can" at the Site was a sufficient basis for joint and several CERCLA liability.

Karl

cc: Craig Melodia, Esq.

1721.4353

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
- - -

DOW CHEMICAL COMPANY, et al., :

Plaintiffs, :

-vs-

: CIVIL NO. C-1-97-307

ACME WRECKING COMPANY,
et al.,

: Friday, August 15, 1997
9:04 a.m.

Defendants. : Cincinnati, Ohio

- - -
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HERMAN J. WEBER, JUDGE
- - -

For the Plaintiffs: Roger J. Makley, Esq.
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For the Defendant Acme Wrecking Co.:

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1 attorney who filed a summary judgment and failed to locate that
2 information in your own client's file. If it depends on the
3 information you get on discovery from others, then, of course,
4 that would be a approach that should be followed and the Court
5 will give due consideration to those issues.

6 Another issue is that minor players should be not
7 required to participate to the fullest extent on a per capita
8 basis. On this point I agree that there is a legitimate
9 concern there, but I remind you that even the person that may
10 have deposited one empty lead paint can on this site possibly
11 could be responsible for the entire 14 million 300 dollars or
12 300 thousand dollars. One empty paint can. Now, I'm not happy
13 about that, but your argument is not with this Court; it's with
14 Congress.

15 So, ladies and gentlemen, I see no other alternative
16 but ADR in this situation. However, that's entirely up to you.
17 I will accept -- the other point is we want the right to opt
18 out. Good. I hope all hundred of you opt out. But if you do,
19 you're going to be responsible to your clients for that
20 decision, \$14,300,000 worth of decision.

21 So I say to you those that opt out, which may be the
22 equitable thing to do in this situation, are taking on a
23 tremendous responsibility if they put one empty lead paint can
24 in this dump or transported it there or are otherwise
25 responsible under the law.

1 Now, having summarized that, I am encouraged by a
2 number of defendants who have already said that they accept
3 what happens here at this hearing and have asked to be excused.
4 Those defendants have been excused from participating in this
5 hearing on condition that they accept what they do here.
6 Therefore, it is presumed that they will accept ADR or whatever
7 other solution we find here.

8 I remind you that under CERCLA 113(f)(2) the settling
9 parties are immune from contribution to the nonsettlers. Just
10 for your information.

11 Now, I think that summarizes the -- as I understand
12 it, there was one party objects to any part of the proceedings,
13 and that one party should make the record at this time.
14 Champion International Corporation, for example, maintains that
15 it is not a PRP. That's fine. That's up to Champion. If they
16 want to take on the 14.3 mill., that's all right. I don't
17 care. But we'll talk about that later.

18 Maybe the plaintiffs at this time could summarize the
19 other objections or so that I'm focused on one elocution at
20 this particular time.

21 MR. MAKLEY: Good morning, Your Honor. I'm Roger
22 Makley, and I represent the plaintiffs in this action.

23 I have with me from the District of Columbia bar
24 Attorney Carl Bourdeau who is with the law firm of Beveridge
25 and Diamond, and I have previously moved his admission to the